

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHNNIE LAMAR WITHERSPOON

Petitioner,

Case No. 1:07-CV-981

v.

Hon. Robert J. Jonker

CAROL HOWES,

Respondent.

_____/

ORDER
APPROVING REPORT AND RECOMMENDATION

On September 14, 2010, this Court issued an Order Adopting the Report and Recommendation filed by the Magistrate Judge (docket #51) and entering Judgment in favor of Respondent. On September 29, 2010, a Motion for Relief from Judgment was filed by Petitioner (docket #54). On October 12, 2010, Petitioner filed a Notice of Appeal (docket #58), the same date this Court issued an Order setting aside the Order Adopting the Report and Recommendation and Judgment of Dismissal (docket #61) and giving an extension of time to November 3, 2010, for Petitioner to file objections to the Report and Recommendation. The United States Court of Appeals for the Sixth Circuit has dismissed the appeal because this Court has reinstated the matter to the open docket with vacation of its Order and Judgment.

Petitioner filed an untimely Motion for Extension of Time to file his response to the Report and Recommendation on November 8, 2010 (docket #64). That request was granted to November 24, 2010 (docket #68).

Review of the court records reveal no objections have been filed. This matter is ripe for decision. No objections have been filed pursuant to 28 U.S.C. § 636(b)(1)(C).

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge, filed August 18, 2010, is approved and adopted as the opinion of the court.

IT IS FURTHER ORDERED that the petitioner's habeas corpus petition is **DENIED**.
Rule 8, Rules Governing § 2254 Cases in the United States District Courts.

IT IS FURTHER ORDERED that a certificate of appealability from the judgment issued this date is **DENIED** because a reasonable jurist could not conclude either that the District Court erred in dismissing the petition for failure to exhaust or that the petitioner should be allowed to proceed further. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE

Dated: January 4, 2011